

1223

2009-2010 Regular Sessions

I N A S S E M B L Y

(PREFILED)

January 7, 2009

Introduced by M. of A. GANTT -- read once and referred to the Committee on Transportation

AN ACT to amend the vehicle and traffic law, in relation to establishing an independent traffic violations bureau

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 Section 1. Title II of the vehicle and traffic law is amended by
2 adding a new article 3-B to read as follows:

3 ARTICLE 3-B

4 TRAFFIC VIOLATIONS BUREAU

5 SECTION 280. STATEMENT OF PURPOSE.

6 281. DEFINITIONS.

7 282. TRAFFIC VIOLATIONS BUREAU; ORGANIZATION.

8 283. FUNCTIONS, POWERS AND DUTIES.

9 284. ADMINISTRATIVE ADJUDICATION OF TRAFFIC VIOLATIONS.

10 S 280. STATEMENT OF PURPOSE. THIS ARTICLE IS ENACTED TO ESTABLISH A
11 TRAFFIC VIOLATIONS BUREAU INDEPENDENT FROM THE DEPARTMENT OF MOTOR VEHI-
12 CLES WHICH SHALL BE RESPONSIBLE FOR PROVIDING THE PUBLIC WITH A JUST
13 SYSTEM OF ADJUDICATING SERIOUS TRAFFIC VIOLATIONS AND OTHER ADMINISTRA-
14 TIVE PROCEEDINGS ARISING UNDER THE PROVISIONS OF THIS CHAPTER AND TO
15 ENSURE THAT THE ELEMENTS OF DUE PROCESS ARE PRESENT WITH REGARD TO SUCH
16 ADJUDICATIONS.

17 S 281. DEFINITIONS. AS USED IN THIS ARTICLE:

18 1. "OFFICE" SHALL MEAN THE TRAFFIC VIOLATIONS BUREAU AS CREATED IN
19 SECTION TWO HUNDRED EIGHTY-TWO OF THIS ARTICLE.

20 2. "DIRECTOR" SHALL MEAN THE DIRECTOR OF THE TRAFFIC VIOLATIONS BUREAU.

21 3. "ADJUDICATORY PROCEEDING" MEANS HEARINGS PURSUANT TO ARTICLE TWO-A
22 OF THIS TITLE.

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets
[] is old law to be omitted.

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1 4. "HEARING OFFICER" MEANS A PERSON APPOINTED BY THE DIRECTOR TO
2 CONDUCT AND PRESIDE OVER CONTESTED ADJUDICATORY PROCEEDINGS IN ACCORD-
3 ANCE WITH THIS ARTICLE.

4 S 282. TRAFFIC VIOLATIONS BUREAU; ORGANIZATION. 1. THERE SHALL BE A
5 SEPARATE AND INDEPENDENT TRAFFIC VIOLATIONS BUREAU TO IMPLEMENT THE
6 PROVISIONS OF ARTICLE TWO-A OF THIS TITLE AND TO BE OPERATED AND ADMIN-
7 ISTERED AS PROVIDED IN THIS ARTICLE CONSISTENT THEREWITH. THE POWERS,
8 FUNCTIONS, DUTIES AND OBLIGATIONS OF THE OFFICE SHALL BE SEPARATE FROM
9 AND INDEPENDENT OF THE AUTHORITY OF THE COMMISSIONER OF MOTOR VEHICLES.

10 2. THE HEAD OF THE OFFICE SHALL BE THE DIRECTOR OF THE TRAFFIC
11 VIOLATIONS BUREAU WHO SHALL BE APPOINTED BY THE GOVERNOR, BY AND WITH
12 THE ADVICE AND CONSENT OF THE SENATE, AND SHALL HOLD OFFICE UNTIL THE
13 END OF THE TERM OF THE APPOINTING GOVERNOR AND UNTIL A QUALIFIED SUCCES-
14 SOR IS APPOINTED. THE DIRECTOR SHALL RECEIVE AN ANNUAL SALARY WITHIN
15 THE AMOUNT APPROPRIATED THEREFOR. NO PERSON SHALL BE APPOINTED DIRECTOR
16 UNLESS AT THE TIME OF HIS OR HER APPOINTMENT HE OR SHE IS KNOWLEDGEABLE
17 ON THE SUBJECT OF ADMINISTRATIVE ADJUDICATION AND HAS BEEN ADMITTED TO
18 PRACTICE AS AN ATTORNEY AT LAW IN THIS STATE FOR AT LEAST TEN YEARS. THE
19 DIRECTOR SHALL HAVE THE IMMEDIATE CHARGE OF THE OFFICE. THE DIRECTOR MAY
20 APPOINT, AND AT PLEASURE REMOVE, SUCH DEPUTY DIRECTORS, ADMINISTRATIVE
21 LAW JUDGES, OTHER ASSISTANTS AND EMPLOYEES OF THE OFFICE AS ARE DEEMED
22 NECESSARY. THE DIRECTOR AND ALL OTHER OFFICERS AND EMPLOYEES OF THE
23 OFFICE SHALL BE PAID AND ALLOWED THEIR NECESSARY, ACTUAL AND REASONABLE
24 EXPENSES INCURRED IN THE EXERCISE OF THEIR DUTIES. ALL SALARIES AND
25 EXPENSES OF THE OFFICE SHALL BE PAID OUT OF THE STATE TREASURY ON THE
26 AUDIT AND WARRANT OF THE COMPTROLLER ON THE CERTIFICATE OF THE OFFICE.
27 THE PRINCIPAL OFFICE SHALL BE IN THE CITY OF ALBANY AND THERE SHALL BE
28 ONE OR MORE OFFICES IN EACH JURISDICTION AS NECESSARY TO CARRY OUT THE
29 PROVISIONS OF ARTICLE TWO-A OF THIS TITLE AND OTHER ADMINISTRATIVE ADJU-
30 DICATION RESPONSIBILITIES UNDER THIS CHAPTER.

31 S 283. FUNCTIONS, POWERS AND DUTIES. THE DIRECTOR SHALL HAVE THE
32 FOLLOWING FUNCTIONS, POWERS AND DUTIES:

33 1. TO ESTABLISH, CONSOLIDATE, ALTER OR ABOLISH ANY DEPARTMENTS IN THE
34 BUREAU AND TO APPOINT THE HEAD OF SUCH DEPARTMENTS AND FIX THEIR DUTIES;

35 2. SUBJECT TO THE CIVIL SERVICE LAW AND THE APPLICABLE COLLECTIVE
36 BARGAINING AGREEMENTS, TO APPOINT, REMOVE OR TRANSFER DEPUTIES, OFFI-
37 CERS, ASSISTANTS, HEARING OFFICERS, COUNSELS AND OTHER EMPLOYEES AS MAY
38 BE NECESSARY FOR THE EXERCISE OF POWERS AND PERFORMANCE OF THE DUTIES OF
39 THE BUREAU AND TO PRESCRIBE THEIR DUTIES, AND FIX THEIR COMPENSATION
40 WITHIN THE AMOUNTS APPROPRIATED THEREFORE;

41 3. WHEN REGULARLY APPOINTED HEARING OFFICERS ARE NOT AVAILABLE, THE
42 DIRECTOR, PURSUANT TO THE APPLICABLE COLLECTIVE BARGAINING AGREEMENTS,
43 MAY CONTRACT WITH QUALIFIED INDIVIDUALS TO SERVE AS HEARING OFFICERS
44 PROVIDED THAT TEMPORARY HEARING OFFICERS SHALL HAVE THE SAME QUALIFICA-
45 TIONS FOR APPOINTMENT AS PERMANENT HEARING OFFICERS;

46 4. TO DEVELOP AND IMPLEMENT A PROGRAM OF EVALUATION TO AID THE DIREC-
47 TOR IN THE PERFORMANCE OF HIS OR HER DUTIES. THE DIRECTOR SHALL DEVELOP
48 STANDARDS AND PROCEDURES WHICH SHALL INCLUDE TAKING COMMENTS FROM
49 SELECTED LITIGANTS AND REPRESENTATIVES BEFORE A HEARING OFFICER;
50 PROVIDED HOWEVER THAT THE DIRECTOR'S AUTHORITY PURSUANT TO THIS SUBDIVI-
51 SION IS SUBJECT TO THE PROVISIONS OF THE CIVIL SERVICE LAW AND APPLICA-
52 BLE COLLECTIVE BARGAINING AGREEMENTS;

53 5. TO THE EXTENT PERMITTED BY LAW, TO PUBLISH AND MAKE AVAILABLE TO
54 THE PUBLIC ALL RECOMMENDED DECISIONS RENDERED BY A HEARING OFFICER;

1 6. TO ADOPT, PROMULGATE, AMEND AND RESCIND RULES AND REGULATIONS TO
2 CARRY OUT THE PROVISIONS OF THIS ARTICLE. SUCH REGULATIONS SHALL SUPER-
3 SEDE ANY INCONSISTENT DEPARTMENT RULES; AND

4 7. TO SUBMIT TO THE GOVERNOR, THE TEMPORARY PRESIDENT AND MINORITY
5 LEADER OF THE SENATE AND THE SPEAKER AND MINORITY LEADER OF THE ASSEMBLY
6 AN EVALUATION OF THE EFFECTIVENESS OF THE BUREAU IN ATTAINING THE OBJEC-
7 TIVES OF THIS ARTICLE PREPARED BY AN INDEPENDENT ENTITY. SUCH EVALUATION
8 SHALL BE SUBMITTED BY NOVEMBER THIRTIETH OF THE SECOND YEAR FOLLOWING
9 THE EFFECTIVE DATE OF THIS SECTION AND BY SEPTEMBER FIRST EVERY TWO
10 YEARS THEREAFTER.

11 S 284. ADMINISTRATIVE ADJUDICATION OF TRAFFIC VIOLATIONS. THE BUREAU
12 SHALL BE VESTED WITH EXCLUSIVE JURISDICTION OVER ALL CASES THAT MAY BE
13 HEARD AND DETERMINED PURSUANT TO THE PROVISIONS OF SECTION TWO HUNDRED
14 TWENTY-FIVE OF THIS TITLE.

15 S 2. Section 225 of the vehicle and traffic law, as amended by chapter
16 682 of the laws of 1970, subdivision 1 as amended by chapter 173 of the
17 laws of 1990 and subdivision 2 as amended by chapter 196 of the laws of
18 1972, is amended to read as follows:

19 S 225. Jurisdiction; transfer of cases; hearing officers; regulations.
20 1. Notwithstanding any inconsistent provision of law, all violations of
21 this chapter or of a law, ordinance, order, rule or regulation relating
22 to traffic, except parking, standing, stopping or pedestrian offenses,
23 which occur within a city having a population of two hundred thousand or
24 more in which administrative tribunals have heretofore been established,
25 or within that portion of Suffolk county for which a district court has
26 been established, and which are classified as traffic infractions, may
27 be heard and determined pursuant to the regulations of the [commission-
28 er] DIRECTOR OF THE TRAFFIC VIOLATIONS BUREAU as provided in [this]
29 article THREE-B OF THIS TITLE. Whenever a crime and a traffic infrac-
30 tion arise out of the same transaction or occurrence, a charge alleging
31 both offenses may be made returnable before the court having jurisdic-
32 tion over the crime. Nothing herein provided shall be construed to
33 prevent a court, having jurisdiction over a criminal charge relating to
34 traffic or a traffic infraction, from lawfully entering a judgment of
35 conviction, whether or not based on a plea of guilty, for any offense
36 classified as a traffic infraction.

37 2. Whenever [the commissioner or his deputy] THE DIRECTOR OF THE TRAF-
38 FIC VIOLATIONS BUREAU determines that a charge alleges an offense other
39 than a traffic infraction, he OR SHE shall, and where a charge cannot be
40 disposed of because of the non-appearance of the motorist, he OR SHE may
41 notify the court of appropriate jurisdiction and request removal of the
42 case to such court. Prior notice of such request need not be given the
43 motorist involved. Upon receipt of such request, the court may grant an
44 order transferring such case, provided that the date on which the charge
45 or charges must be answered before the court shall not be earlier than
46 the return date which appears on the complaint alleging the offense.
47 Notice of transfer of cases involving other than traffic infractions
48 shall be mailed to the motorist at the address appearing on such
49 complaint not less than ten days before the date of appearance indicated
50 on his OR HER summons and not less than fifteen days before his OR HER
51 scheduled appearance in such court. Notice of transfer of cases which
52 cannot be disposed of because of the non-appearance of the motorist
53 shall be mailed to the motorist at the address appearing on such
54 complaint not less than fifteen days before his OR HER scheduled appear-
55 ance in such court. Such mailing shall constitute due notice of such

1 transfer. Thereafter, such case shall be treated in the same manner as
2 if the complaint had initially been filed with such court.

3 3. The commissioner [shall appoint such hearing officers as shall be
4 necessary to hear and determine cases as provided by this article and]
5 may promulgate [such] regulations [as shall be necessary or desirable to
6 effect the purposes of this article. Such regulations may] TO provide
7 for a schedule of monetary penalties to be used where an answer is made,
8 other than before a hearing officer, admitting a charge, provided that
9 no such penalty shall exceed the maximum fine established by law for the
10 traffic infraction involved.

11 S 3. Codification of changes. Within nine months of the effective date
12 of this section, the commissioner of motor vehicles shall prepare and
13 submit to the governor, the temporary president and minority leader of
14 the senate, and the speaker and minority leader of the assembly a
15 proposed codification of changes in law necessary and appropriate to
16 carry out the purposes and provisions of article 3-B of the vehicle and
17 traffic law as added by section one of this act. Such changes shall
18 include provisions for transition of personnel and cases to the traffic
19 violations bureau.

20 S 4. This act shall take effect on the first of January next succeed-
21 ing the date on which it shall have become a law; except that section
22 three of this act shall take effect immediately.